



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 4, 2022

Governor's Office of Planning & Research

AUG 04 2022

Ty Phimmasone, Transportation Planner
Merced County Association of Governments
369 West 18th Street
Merced, California 95340
Ty.phimmasone@mcagov.org

STATE CLEARINGHOUSE

Subject: Program Environmental Impact Report for the Merced County Association of Governments (MCAG) 2022 Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) (Project) Draft Environmental Impact Report (DEIR) State Clearinghouse No. 2021110289

Dear Ty Phimmasone:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the MCAG for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Merced County Association of Governments (MCAG)

Objective: The objective of the Project is to develop a Program Environmental Impact Report (hereafter, Program EIR) analyzing impacts of the MCAG 2022 Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS), in compliance with the 2017 California Regional Transportation Planning Guidelines. The Program EIR is considered the "first-tier" CEQA document for future project-specific CEQA documents represented in the 2022 RTP/SCS. Implementing agencies tiering from this document will incorporate appropriate information from this Program EIR in their project-specific analyses and CEQA documents. The programs and projects to be included in the 2022 RTP/SCS will be analyzed through development of the Program EIR. A more detailed or project-level environmental assessment (if required) of the various projects included in the RTP/SCS will be conducted by the various responsible agencies before they are approved for construction and implementation. The Program EIR will address all transportation modes including motor vehicles, transit (commuter and local), rail (commuter and interregional), goods movements (rail freight and trucking), bicycle and pedestrian facilities, aviation systems, and transportation systems management (TSM) programs and projects considering the horizon year of 2046. In addition, the Project will:

- Identify the region's transportation goals, objectives, and policies.
- Include the SCS, which demonstrates how the region will meet its greenhouse gas reduction target through integrated land use, and housing and transportation planning. Once adopted by MCAG, the SCS becomes an integral part of the RTP.
- Set forth an action plan of projects and programs to address the needs consistent with the Policy Element
- Documents the financial resources needed to implement the plan
- Reflects results of the Transportation Conformity Analysis

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- Highlights the 2022 RTP/SCS EIR process and results
- Details the RTP/SCS public outreach process
- Includes the Environmental Justice analysis process

Location: The Project site is located within the corporate limits of Merced County, California, including six (6) incorporated cities (Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced) and all unincorporated areas under the jurisdiction of the County of Merced.

Timeframe: Until 2046.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist MCAG in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW understands that the MCAG seeks to develop a transportation planning document to guide transportation development projects within its six member jurisdictions in Merced County. Given the county-wide implications of this RTP/SCS, CDFW is concerned that subsequent projects tiering from this Program EIR could impact special-status species including, but not limited to, the State threatened California tiger salamander (*Ambystoma californiense*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally threatened giant gartersnake (*Thamnophis gigas*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the following species of special concern: American badger (*Taxidea taxus*), spadefoot toad (*Spea hammondi*), western pond turtle (*Actinemys marmorata*), and burrowing owl (*Athene cunicularia*).

Biotic Resources 3.5.1-4

Biotic Resources 3.5.1-4 of the DEIR states that "if sensitive plant or wildlife species and non-native habitat are identified within the biological impact area, a Biological Resources Management Plan will be developed to address appropriate avoidance and minimization measures."

CDFW previously commented on the Notice of Preparation for the Project in a letter dated December 21, 2021. Our December 21, 2021 letter (Attachment 1) provided recommendations for listed wildlife species, and concerns for project impacts to waterways/waterbodies. CDFW maintains the same recommendations for advised survey methods and mitigations measures from our December 21, 2021 letter. CDFW advises that the recommendations from that letter be incorporated into the Biological Resources Management Plan for the subsequent tiered projects.

CDFW appreciates the opportunity to comment on the Project to assist MCAG in identifying and mitigating project impacts on biological resources. If you have any

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questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Bob Stafford

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for Julie A. Vance
Regional Manager

Attachment 1

ec: Office of Planning and Research
State Clearinghouse
state.clearinghouse@opr.ca.gov

Jim Vang
California Department of Fish and Wildlife



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Governor's Office of Planning & Research

Dec 21 2021

December 21, 2021

STATE CLEARINGHOUSE

Matt Fell, Deputy Director - Planning
Merced County Association of Governments
369 West 18th Street
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Subject: Program Environmental Impact Report for the Merced County Association of Governments (MCAG) 2022 Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) (Project) Notice of Preparation (NOP) State Clearinghouse No. 2021110289

Dear Mr. Fell:

The California Department of Fish and Wildlife (CDFW) received a NOP from the MCAG for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Merced County Association of Governments (MCAG)

Objective: The objective of the Project is to develop a Program Environmental Impact Report (hereafter, Program EIR) analyzing impacts of the MCAG 2022 Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS), in compliance with the 2017 California Regional Transportation Planning Guidelines. The Program EIR is considered the "first-tier" CEQA document for future project-specific CEQA documents represented in the 2022 RTP/SCS. Implementing agencies tiering from this document will incorporate appropriate information from this Program EIR in their project-specific analyses and CEQA documents. The programs and projects to be included in the 2022 RTP/SCS will be analyzed through development of the Program EIR. A more detailed or project-level environmental assessment (if required) of the various projects included in the RTP/SCS will be conducted by the various responsible agencies before they are approved for construction and implementation. The Program EIR will address all transportation modes including motor vehicles, transit (commuter and local), rail (commuter and interregional), goods movements (rail freight and trucking), bicycle and pedestrian facilities, aviation systems, and transportation systems management (TSM) programs and projects considering the horizon year of 2046. In addition, the Project will:

- Identify the region's transportation goals, objectives, and policies.
- Include the SCS, which demonstrates how the region will meet its greenhouse gas reduction targets (currently being discussed by the California Air Resources Board and the eight (8) San Joaquin Valley Regional Transportation Planning Agencies)

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through integrated land use, and housing and transportation planning. Once adopted by MCAG, the SCS becomes an integral part of the RTP.

- Set forth an action plan of projects and programs to address needs such as:
 - Provide a good system of roads that are well maintained, safe, efficient, and meet the transportation demands of people and freight,
 - Provide a transit system that is a viable choice,
 - Support full-time employment with livable wages – i.e. support job creation and economic vitality,
 - Preserve productive agricultural land/maintain strong agricultural economy and the quality of life that goes with it,
 - Support orderly and planned growth that enhances the integration and connectivity of various modes of transportation,
 - Support clean air and water and avoid, minimize, or mitigate negative impacts to the environment,
 - Identify and allocate funding and resources for building, operating, and maintaining the existing and future regional transportation system and ensure that transportation investments are cost-effective.
- Assess current modes of transportation.
- Predict future transportation needs.
- Propose solutions to current and future transportation problems.
- Detail the financial resources needed to implement the RTP/SCS.
- Be consistent with related plans and activities.
- Involve the public.
- Coordinate with other governmental agencies.
- Provide enough detail on proposed projects to assist with the:
 - Development of capital improvement programs,
 - Identification of a transportation project's purpose and need,
 - Environmentally review transportation projects,
 - Estimate emission impacts of transportation projects for air quality conformity,
 - Decisions related to land use development and growth.

Location: The Project site is located within the corporate limits of Merced County, California, including six (6) incorporated cities (Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced) and all unincorporated areas under the jurisdiction of the County of Merced.

Timeframe: Until 2046.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist MCAG in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the subsequent Program EIR.

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CDFW understands that the MCAG seeks to develop a transportation planning document to guide transportation development projects within its six member jurisdictions in Merced County. The Program EIR that will be prepared will determine the likely environmental impacts associated with subsequent projects. Given the county-wide implications of this RTP/SCS, CDFW is concerned that subsequent projects (hereafter, "projects") tiering from this Program EIR could impact special-status species including, but not limited to, the State threatened California tiger salamander (*Ambystoma californiense*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally threatened giant gartersnake (*Thamnophis gigas*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the following species of special concern: American badger (*Taxidea taxus*), spadefoot toad (*Spea hammondi*), western pond turtle (*Actinemys marmorata*), and burrowing owl (*Athene cunicularia*).

California Tiger Salamander (CTS)

CTS have the potential to be impacted by project activities. Merced County contains both terrestrial and aquatic habitats, and both habitat types are necessary for the CTS life cycle. CTS breed and develop in vernal and seasonal pools and stock ponds within grassland, woodland, and scrub habitat types. They require upland refuges (i.e. small mammal burrows) when not breeding and have been demonstrated to disperse up to 1.3 miles from aquatic habitat (Searcy and Shaffer 2011).

Prior to ground-disturbing activities, CDFW recommends that a qualified wildlife biologist assess individual project sites and their vicinity (i.e. up to 1.3-mile radius buffer) to evaluate potential for CTS and presence of both upland and aquatic habitat features which could support the species. If suitable habitat is present, CDFW recommends site assessments follow the USFWS's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (2003). If surveys determine that CTS have the potential to be present, CDFW advises avoidance for CTS include a minimum 50-foot no-disturbance buffer delineated around all small mammal burrows and a 250-foot buffer around all aquatic habitat features with potential to support breeding. If these no-disturbance buffers cannot be maintained, or if presence of the species is assumed, take authorization through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b), is recommended prior to any ground disturbing activities to comply with CESA.

San Joaquin Kit Fox (SJKF)

Very little habitat considered highly suitable for SJKF remains in Merced County (Cypher et al. 2013). Undeveloped land in western Merced County, spanning the area from around Los Banos Reservoir to north of San Luis Reservoir, has been identified by CDFW and the United States Fish and Wildlife Service (USFWS) as a movement corridor critical to the continued existence and genetic diversity of the northern SJKF population. The Santa Nella area in particular has been identified as a critical SJKF movement "pinch-point". The

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creation of the San Luis Reservoir and O'Neil Forebay resulted in a large movement barrier to the north-south migration of SJKF, and busy highways in the area such as State Routes 152 and 33 and Interstate 5, as well as existing urban development in the vicinity, further compounded this problem (HT Harvey and Associates 2004). As a result, any upland habitat in this area that could serve as movement or rest areas for SJKF has very high conservation values for this species.

SJKF den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. It is important to note that SJKF populations are known to fluctuate and a negative finding from biological surveys in any one year does not necessarily demonstrate absence of kit fox on a site. In addition, SJKF may be attracted to both construction materials (pipes, etc.) and construction footprints due to the type and level of activity (excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance.

CDFW recommends the Program EIR quantify and describe the potential for subsequent projects to result in direct and indirect impacts to SJKF. This information, in addition to adequate description of habitat features on individual projects sites, is essential to adequately assess project impacts. Prior to ground-disturbing activities, CDFW recommends that a qualified wildlife biologist assess individual project sites to determine if habitat suitable to support SJKF is present. If suitable habitat is present, CDFW recommends that a qualified biologist assess presence/absence of SJKF by conducting surveys following the USFWS's "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) and implementing no-disturbance buffers around den sites, as described in the USFWS document. SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Giant gartersnake (GGS)

Currently, GGS are isolated to only nine disjunct populations. At the time of the species' listing under the Federal Endangered Species Act in 1993, USFWS recognized 13 populations. Since then, two of these populations have been determined to be extirpated (USFWS 2017). Habitat loss and fragmentation are the primary threats to GGS. Only 5% of the species' historic wetland habitat acreage remains. In addition, Central Valley populations of GGS are also susceptible to roads, vehicular traffic, and non-native species (USFWS 2017).

The species has specific seasonal habitat requirements. During the summer months, GGS require aquatic habitat for foraging and adjacent upland areas with emergent vegetation for basking sites (USFWS 2017). During periods of inactivity, GGS require burrows in upland habitat as refugia for summer shelter and burrows in higher elevation uplands for winter hibernation (Hansen et al. 2015). Subsequent projects tiering from the Program EIR may consist of ground-disturbing activities. These activities have the potential to result in

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excavation and collapse of GGS refugia and may result in a violation of CESA if GGS are present.

Prior to ground-disturbing activities, CDFW recommends that a qualified wildlife biologist assess individual project sites to determine if habitat suitable to support GGS is present. If suitable habitat is present, CDFW recommends no more than 30 days prior to ground disturbing activities, a qualified biologist with giant gartersnake experience and knowledge of its ecology survey a minimum 50-foot radius around the work area for burrows and crevices in which giant gartersnake could be present. CDFW advises that all potentially suitable burrows and crevices be flagged and avoided by a minimum 50-foot no-disturbance buffer. If avoidance is not feasible, or if presence of GGS is assumed, take authorization through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b), is recommended prior to any ground-disturbing activities to comply with CESA.

Swainson's Hawk (SWHA)

Projects tiering from the Program EIR have the potential to impact SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from subsequent project activities include nest abandonment, reduced nesting success (loss or reduced health or vigor of eggs or young), and loss of foraging habitat.

To avoid impacts to nesting SWHA, CDFW recommends that subsequent project's ground-disturbing activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if ground-disturbing activities must take place during that time, CDFW recommends that a qualified wildlife biologist determine if suitable habitat is present on or adjacent to individual project sites. If suitable habitat is present, CDFW recommends a qualified wildlife biologist conduct surveys following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) be conducted by a qualified wildlife biologist prior to project implementation. If active nests are detected, CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around them until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

SWHA will forage in mixed agricultural lands that support irrigated hay crops (e.g., alfalfa), as well as dryland pasture, grassy ruderal lots, and some irrigated crops. To reduce impacts to SWHA foraging habitat to less than significant, CDFW recommends compensation of its loss as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG 1994). Specifically, the Staff Report recommends that

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mitigation for foraging habitat loss occur within a minimum distance of 10 miles from known nest sites using the following criteria:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest tree but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

Tricolored Blackbird (TRBL)

TRBL are known to nest in alfalfa, wheat, and other low agricultural crop fields. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Without appropriate avoidance and minimization measures for TRBL, potential significant impacts of projects tiering from the Program EIR include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young. CDFW recommends that project ground-disturbing activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if ground-disturbing activities must take place during that time, CDFW recommends that a qualified wildlife biologist determine if suitable habitat is present on or adjacent to individual project sites. If suitable habitat is present, CDFW recommends a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW recommends conducting additional pre-activity surveys within 10 days prior of project initiation to reassess the colony's areal extent. If a TRBL nesting colony is detected during surveys, consultation with CDFW is

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warranted to discuss how to implement the project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

American Badger:

Badgers occupy and excavate dens within sparsely vegetated land cover comprised of dry friable soils that supports fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if individual project sites or their immediate vicinity contain suitable habitat for American badger. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance. Avoidance whenever possible is encouraged via delineation of a 50-foot no-disturbance buffer around occupied dens and a 250-foot no-disturbance buffer around natal dens until it is determined through non-invasive means that individuals occupying the den(s) have dispersed.

Western spadefoot:

Western spadefoot inhabit grassland habitats, breed in seasonal wetlands, including temporary pools, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if individual project sites or their immediate vicinity contain suitable habitat for western spadefoot. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for western spadefoot and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance. Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows and breeding ponds/pools.

Western Pond Turtle (WPT)

WPT are known to nest in the spring or early summer within 100 meters of water bodies, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016). Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality. CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if individual project sites or their immediate vicinity contain suitable habitat for WPT. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for WPT 10 days prior to project ground disturbance. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched. Avoidance of nests

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whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer. In addition to avoidance of nest sites, CDFW recommends that corridors from nest sites to suitable habitat features also be avoided by project activities until the eggs have hatched. CDFW further recommends that if any WPT are discovered at project sites immediately prior to or during project activities, they be allowed to move out of the area on their own, or that a qualified biologist with appropriate take authorization move WPT out of harm's way to an appropriate location.

Burrowing Owl (BUOW)

BUOW use small mammal burrows for nesting and cover. Dispersing juveniles, migrants, transients or new colonizers may occur in Merced County year-round. Therefore, project activities could impact this species. CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if individual project sites or their immediate vicinity contain suitable habitat for BUOW. If suitable habitat is present, CDFW recommends that a qualified biologist determine if species-specific surveys are necessary to determine if BUOW may be impacted by project activities. CDFW recommends the survey methods described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) be followed before beginning ground disturbing activities. In the event that BUOW are found, CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Nesting birds

CDFW encourages that project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), individual project proponents are responsible for ensuring that implementation of a project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a

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sufficient area around individual project sites to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of project ground-disturbing activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once ground-disturbing activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Lake and Streambed Alteration: Projects tiering from the Program EIR may involve work that has the potential to impact waterways within Merced County and may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1600 et seq. requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

Federally Listed Species

CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to CTS, GGS, and SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist MCAG in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559)580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Bob Stafford

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Julie A. Vance
Regional Manager

Attachment 1

ec: R4 LSA

Patricia Cole, USFWS
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Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)****PROJECT: Merced County Association of Governments 2022
Regional Transportation Plan/Sustainable Communities
Strategy****SCH No.: 2021110289**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: CTS	
CTS Habitat Assessment	
CTS Surveys	
CTS Take Authorization	
Mitigation Measure: SJKF	
SJKF Habitat Assessment	
SJKF Surveys	
SJKF Take Authorization	
Mitigation Measure: GGS	
GGS Habitat Assessment	
GGS Surveys	
GGS Take Authorization	
Mitigation Measure: SWHA	
SWHA Habitat Assessment (Nesting and Foraging)	
SWHA Surveys	
SWHA Foraging Habitat Mitigation	
SWHA Take Authorization	
Mitigation Measure: TRBL	
TRBL Habitat Assessment	
TRBL Surveys	
TRBL Take Authorization	
Mitigation Measure: American Badger	
American Badger Habitat Assessment	
American Badger Surveys	
Mitigation Measure: Spadefoot Toad	
Spadefoot Habitat Assessment	
Spadefoot Toad Surveys	
Mitigation Measure: WPT	
WPT Habitat Assessment	

WPT Surveys	
Mitigation Measure: BUOW	
BUOW Habitat Assessment	
BUOW Surveys	
<i>During Construction</i>	
Mitigation Measure: CTS	
CTS Avoidance	
Mitigation Measure: SJKF	
SJKF Avoidance	
Mitigation Measure: GGS	
GGS Avoidance	
Mitigation Measure: SWHA	
SWHA Avoidance	
Mitigation Measure: TRBL	
TRBL Avoidance	
Mitigation Measure: American Badger	
American Badger Avoidance	
Mitigation Measure: Spadefoot Toad	
Spadefoot Toad Avoidance	
Mitigation Measure: WPT	
WPT Nest Avoidance	
WPT Movement	
Mitigation Measure: BUOW	
BUOW Avoidance	